

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

IN THE MATTER OF:

PROPOSED ACQUISITION OF,
CONTROL OF, AND MERGER
WITH, NCRIC GROUP, INC BY
PROASSURANCE CORPORATION

CASE NO : A-HC-05-01

DECISION AND ORDER

Jurisdiction

The District of Columbia Department of Insurance, Securities and Banking (the "Department") has jurisdiction to consider whether to approve the proposed acquisition of control of, and merger with, NCRIC Group, Inc. ("NCRIC Group")¹ by ProAssurance Corporation ("ProAssurance" or "Applicant"). (See the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 *et seq.*) (the "HCS Act"), and the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

Procedural History

On April 15, 2005, ProAssurance filed a Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the "Form A") with the Department requesting approval

¹ NCRIC Group is a holding company organized under the laws of Delaware. NCRIC, Inc., is a licensed property and casualty insurance company organized under the laws of the District of Columbia, and NCRIC, Inc. is a wholly owned subsidiary of NCRIC Group. American Captive Corporation ("ACC") is a captive insurance company organized under the laws of the District of Columbia, and ACC is a wholly owned subsidiary of NCRIC, Inc. ACC is not currently transacting any insurance business and does not have any policyholders. Tr. at 18; NCRIC Response at I C. The change of control of ACC is governed by the June 6, 2005 hearing and this Decision and Order

National Capital Reciprocal Insurance Company ("NCRIC"), the predecessor of NCRIC, Inc., was founded in 1980. Effective December 31, 1998, pursuant to a public hearing held on September 9 and 10, 1998, NCRIC was reorganized as a stock insurance company, NCRIC, Inc., through the mutual holding company structure, with NCRIC Group as its immediate holding company parent. See Department Decision and Order No. RIC-98-01 dated November 25, 1998. On June 25, 2003, pursuant to a public hearing held on May 5, 2003, NCRIC Group completed a plan of conversion and reorganization in which NCRIC Group became a fully public company called NCRIC Group, Inc. See Department Decision and Order No. DMA 03-01 dated May 14, 2003.

by the Commissioner of the Department of Insurance, Securities and Banking (“Commissioner”) of ProAssurance’s proposed acquisition of control of, and merger with NCRIC Group.² A hearing was set for June 6, 2005 to review the proposed acquisition and merger and the Form A filing. Notice of the hearing was published in the *District of Columbia Register* on May 6, 2005 and posted on the Department’s website. Notice of the hearing was also published through press releases issued by ProAssurance and NCRIC Group. On May 24, 2005, ProAssurance provided notice of the hearing to NCRIC, Inc. and American Captive Corporation, as required by D.C. Official Code § 31-703(g)(2).

On May 16, 2005, Public Citizen’s Congress Watch (“Public Citizen”) filed a Motion to Intervene pursuant to 26 D.C.M.R. § 3806.7. On May 20, 2005, ProAssurance filed an Opposition to that Motion. On May 23, 2005, NCRIC Group also filed an Opposition to the Motion by Public Citizen. On May 27, 2005, the Department issued an Opinion and Order denying the Motion to Intervene on the ground that Public Citizen had failed to show that it met the qualifications for intervention. Public Citizen neither alleged nor provided any factual or other bases to show an actual or imminent threat or injury that is concrete or particularized to itself or its members, nor did it show why it should be admitted for limited purposes. The May 27, 2005 Opinion and Order, however, said that Public Citizen would be permitted to attend the June 6, 2005 public hearing and provide written and/or oral testimony for the record.

The Department’s staff and outside counsel reviewed and analyzed the Form A filing in detail and held several meetings with representatives of NCRIC Group and ProAssurance to obtain clarification of, and additional information about, the proposed merger and acquisition.

On May 23, 2005, the Department served separately ProAssurance and NCRIC Group with Interrogatories and Document Requests, seeking additional information regarding the Form A filing and the specifics and impact of the proposed merger and acquisition. On May 31, 2005, ProAssurance filed Responses to those Interrogatories and Document Requests [hereinafter, the “PRA Response”]. On this same date, NCRIC Group filed its own Responses to the Interrogatories and Document Requests it had received [hereinafter, the “NCRIC Response”].

² According to the Form A, ProAssurance will acquire control of NCRIC Group pursuant to an Agreement and Plan of Merger dated February 28, 2005 [hereinafter, the “Merger Agreement”]. Under the terms of the Merger Agreement, NCRIC Group will merge with and into NCP Merger Corporation, a Delaware corporation and a wholly owned subsidiary of ProAssurance, with NCP Merger Corporation being the surviving corporation. In the merger, the shareholders of NCRIC Group would receive shares of ProAssurance common stock in exchange for their shares of NCRIC Group common stock.

Included as part of ProAssurance’s Form A filing package were the following exhibits: (A) the Merger Agreement; (B) Organizational Chart; (C) Biographical Affidavits for the ProAssurance Corporate Officers and Directors; (D) Proposed Plan of Operation; (E) ProAssurance Corporation Form 10K for year ended 12/31/04 & Annual Report to Shareholders; (F) ProAssurance Corporation Form 10K for the year ended 12/31/03 & Annual Report to Shareholders; (G) ProAssurance Corporation Form 10K for year ended 12/31/02; (H) ProAssurance Corporation Form 10K for year ended 12/31/01; (I) Annual Statement for the year ended 12/31/04 for The Medical Assurance Company, Inc.; (J) Annual Statement for the year ended 12/31/04 for ProNational Insurance Company; (K) Annual Statement for the year ended 12/31/04 for Red Mountain Casualty Insurance Company, Inc.; (L) Annual Statement for year ended 12/31/04 for Medical Assurance of West Virginia, Inc., now known as Woodbrook Casualty Insurance, Inc.; (M) Annual Statement for the year ended 12/31/04 for MEEMIC Insurance Company; and (N) Form S-4 Registration Statement filed with the SEC. See Ex. 1 to transcript of the June 6, 2005 public hearing.

Pursuant to the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, NCRIC Group and ProAssurance each filed notice of the proposed merger with the Federal Trade Commission and the United States Department of Justice. These federal agencies raised no objections to the proposed merger based on competitive effects, and on May 24, 2005, granted "early termination" of the required waiting periods.

The public hearing on the Form A was held on June 6, 2005. I presided and was assisted by Leslie Johnson, Hearing Officer. ProAssurance was represented by Robert H. Myers, Esq., Morris, Manning & Martin, and Jack P. Stephenson, Jr., Esq., of Burr & Forman LLP. NCRIC Group was represented by John J. Gorman, Esq., Luse Gorman Pomeroy & Schick, P.C., and the Department was represented by Department Staff Attorneys Rhonda K. Blackshear, Esq., Adam Levi, Esq., and Barry Kreiswirth, Esq., and Special Counsels Phillip E. Stano, Esq., and Steven Kass, Esq.

At the hearing, testimony was presented by representatives of ProAssurance and NCRIC Group. Testimony also was given by K. Edward Shanbacker, on behalf of the Medical Society of the District of Columbia, and Christopher H. Schmitt, on behalf Public Citizen. Testimony was also presented by Phillip A. Barlow, Director, Financial Examination Division of the Department. At the hearing, documents were entered into the record as exhibits to the hearing transcript. Among such exhibits were letters or written statements from: shareholders of NCRIC Group; policyholders of NCRIC, Inc.; the departments of insurance of the states of Alabama, Florida, Illinois, Michigan, and Ohio; the president of Professional Risk Associates, an independent insurance agency serving the District of Columbia; the president of the Zutzy Group, an insurance agency serving physicians in Delaware; and the Medical Society of Virginia.

The public hearing was completed on June 6, 2005. The record was held open until June 20, 2005, to receive additional comments and supplements to the record. On June 20, 2005, ProAssurance filed completed biographical affidavits, as I had requested, and Public Citizen filed a supplement to its testimony.

Issues Presented

Section 4 of the HCS Act requires the Commissioner to approve any merger or other acquisition of control over a domestic insurer (other than a nonprofit hospital service plan or medical service plan) unless, after a public hearing, the Commissioner makes any one of the following findings:

1. After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly;

3. The financial condition of any acquiring company is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;
4. The plans or proposals which the acquiring company has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer or are not in the public interest;
5. The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

D.C. Official Code § 31-703(g)(1)(A)(i)-(vi).

Findings of Fact

After having considered all of the exhibits, testimony and written statements presented at the June 6, 2005 public hearing, and all documents submitted for the record,³ I make the following findings of fact:

1 ProAssurance is a specialty insurer with more than \$3.3 billion in assets and \$789 million in gross written premiums, of which three quarters was medical malpractice, for 2004. See Tr. at 37. Through its insurance subsidiaries, ProAssurance is the nation's fourth largest writer of medical professional liability insurance and currently insures approximately 23,000 physicians in 22 states. See Tr. at 38, 55-56. ProAssurance's professional liability subsidiaries include The Medical Assurance Company, Inc.; Red Mountain Casualty Insurance Company, Inc.; and Woodbrook Casualty Insurance, Inc., all of which are domiciled in Alabama. An additional subsidiary, ProNational Insurance Company, is domiciled in Michigan. ProAssurance also is the attorney-in-fact for American Medical Exchange, a dormant reciprocal insurer domiciled in Indiana. ProAssurance is the tenth largest writer of personal auto coverage in Michigan through its subsidiary MEEMIC Insurance Company, which is domiciled in Michigan. See Tr. at 38-39. None of ProAssurance's insurance subsidiaries currently write business in the District. See Tr. at 166.

³ The full record of the June 6, 2005 hearing (transcript and exhibits), as well as all documents submitted supplementally for the record on or before June 20, 2005, form the basis for this Order. Citations to the record in this Decision and Order do not constitute the sole reference for the matter under discussion, but are illustrative only. Citations to the transcript of the hearing are designated by "Tr."; citations to exhibits in the record are designated by "Ex."; citations to statements contained in ProAssurance's Response (which was marked as Ex. 12 during the hearing) are designated by "PRA Response"; and citations to statements contained in the NCRIC Group's Response (which was marked as Ex. 13 during the hearing) are designated by "NCRIC Response."

2. ProAssurance filed the Form A pursuant to the HCS Act for approval of its acquisition of NCRIC Group, the parent company of NCRIC, Inc., a District of Columbia domestic insurance company. See Tr. at 30. Both ProAssurance's and NCRIC Group's Boards of Directors approved the acquisition, and pursuant to Delaware corporate law, the merger must be approved by the shareholders of NCRIC Group. See Tr. at 29, 57, 81, PRA Response at V.D.

3. Notice of the hearing was published in the *District of Columbia Register* on May 6, 2005, a copy was provided by ProAssurance to NCRIC Group, and notice was issued as a press release by ProAssurance. A copy of the notice was also posted on the Department's website. See Tr. at 11-12, 31, 32; Ex. 2.

4. Letters supporting the approval of the Form A were received into the record from shareholders of NCRIC Group and from policyholders of NCRIC, Inc.: Sandra I. Read, M.D., dated June 3, 2005; Frederick B. Hendricks, M.D., dated June 2, 2005, and Robert Collins, M.D., received June 3, 2005. Also, Lawrence Zutz, President, The Zutz Group, dated May 23, 2005; John E. Glander, President, Professional Risk Associates, dated May 23, 2005; and Paul Kitchen, Executive Vice President, Medical Society of Virginia, dated May 19, 2005, provided letters. See Exs. 22 – 27. The Department received letters from the Departments of Insurance of the States of Alabama, Florida, Illinois, Michigan, and Ohio. See Exs. 14-21. All letters submitted were supportive of the merger and acquisition.

5. Following the acquisition, NCRIC, Inc. will continue to operate as a property and casualty insurer licensed and domiciled in the District. See Tr. at 58, 74, 91; PRA Response at IV.H.2. ProAssurance intends to consolidate some of its regional business and make NCRIC, Inc.'s office in the District its regional headquarters for underwriting, policy administration, claims and risk management operations. See Tr. at 89; PRA Response at IV.H.2.

6. ProAssurance operates five insurance subsidiaries, which write medical malpractice business on an admitted basis in 22 states. Tr. at 38-39. ProAssurance submitted letters of support and good standing from five of those jurisdictions, including the two states for which its principal subsidiaries are domiciled. See Exs. 14-21. ProAssurance represented that it has "experienced, stable management" with an average of 22 years in the industry and an average of 14 years with ProAssurance. PRA Response at III.E.2 & Exhibit F thereto. ProAssurance submitted biographical affidavits of its senior officers and directors for the Department's review, which the Department has reviewed.⁴ ProAssurance's President, Victor T. Adamo, testified at the public hearing that he believed the competence, experience and integrity of those persons who will control the operation of NCRIC, Inc., after the merger will be in the interest of the policyholders of NCRIC, Inc. and the public; that their competence, experience and integrity is reflected in their insurance and SEC filings and reports; and that ProAssurance's goal with this merger is to capture the local expertise of the current management and staff of NCRIC in the District of Columbia. Tr. at 169-70.

⁴ The Department's review of the biographical affidavits revealed that some of the affidavits were incomplete and that some of the affidavits raised questions. The Department requested that ProAssurance address its questions concerning the substance of the affidavits and resubmit complete affidavits. ProAssurance subsequently submitted updated affidavits, and all questions were resolved to the Department's satisfaction. See Tr. at 227; PRA Response at II.J.

7 Neither NCRIC nor ProAssurance was aware of any reason why NCRIC, Inc. would not, after a change of control, be able to satisfy the license requirements to write medical malpractice insurance in the District. See PRA Response at III A; NCRIC Response at III A. In connection with the acquisition of NCRIC, Inc., ProAssurance will issue between \$55 million and \$75 million in ProAssurance stock to shareholders of NCRIC Group.⁵ ProAssurance, as a holding company, operates through its subsidiaries and has every incentive to ensure that the license of NCRIC, Inc. remains in compliance. The “continued licensure of [ProAssurance’s] operating subsidiaries is of utmost concern.” PRA Response at III A. ProAssurance intends to implement the same safeguards it currently uses to ensure that its current insurance subsidiaries are continually meeting the requirements for licensure in their respective jurisdictions of operation, and those safeguards include, but may not be limited to monitoring minimum surplus requirements and IRIS ratios for financial stability and maintaining all statutorily required financial and other filings. Id.

8 Both ProAssurance and NCRIC Group testified that the effect of the acquisition of control would not operate to substantially lessen competition in the District or tend to create a monopoly. See Tr. at 166; PRA Response at III B; NCRIC Response at III B.

9 ProAssurance and NCRIC Group made filings under the Hart-Scott-Rodino Act with the Federal Trade Commission and the United States Department of Justice and they received “early termination” of the waiting period under that Act. See Tr. at 82, 85-86. ProAssurance stated it has no plans to acquire other insurance companies in the District that operate in the same lines of business. See PRA Response at III B 4.

10 ProAssurance and NCRIC Group testified that the acquisition would yield economies of scale. Specifically, ProAssurance testified that because of ProAssurance’s size and lower expense ratio, NCRIC, Inc. should be able to benefit from those economies within the first year. See Tr. at 112, 148-50; PRA Response at III B 2. ProAssurance testified that NCRIC policyholders will also benefit from the strength of ProAssurance’s financial condition, depth of management and operational resources. See PRA Response at III D 5. With regard to reinsurance, ProAssurance testified that it benefits from greater premium volume and geographic diversification, with the effect of averaging volatile results over a larger premium base. PRA Response at IV G. ProAssurance expects that NCRIC business will be included within the ProAssurance reinsurance program effective January 1, 2006. Id.

11 Pro forma financial statements filed by ProAssurance with its registration statement on Form S-4 indicate that after the merger, the combined companies would have had net income of \$65.6 million in 2004, notwithstanding the fact that NCRIC Group sustained a loss from its operations in 2004. See Tr. at 62.

⁵ According to the Form A, the proposed purchase price was approximately \$69.9 million, although the exact amount would not be known until the “Market Value” price was established pursuant to the Merger Agreement. Under the terms of the Merger Agreement, each share of NCRIC Group common stock would be exchanged for 0.25 shares of ProAssurance common stock, subject to adjustment if the Market Value of the ProAssurance shares exceeded or fell below specified amounts. See Ex. 1, at Item 4.

12. With respect to the acquisition, no assets of NCRIC, Group or NCRIC, Inc. will be used to fund the merger. PRA Response at III.C.1. Rather, virtually all of the consideration for the merger will be paid in ProAssurance common stock. *Id.* The financial stability of ProAssurance should operate to strengthen the financial stability of NCRIC, Inc. and provide an important source of capital in the future, if necessary. See Tr. at 128-29, PRA Response at III.C.1. ProAssurance stated that it has a demonstrated history of providing capital to its subsidiaries to support their stability and growth. PRA Response at III.C.1. ProAssurance testified at the hearing that it would sustain the capital necessary for NCRIC to run its operations, that it does not foresee any limitations on the amount of capital it would be willing to interject into NCRIC, Inc. to support NCRIC, Inc.'s current or expected operations, and that it has not placed any limit of the amount of capital ProAssurance would be willing at this time to commit to NCRIC, Inc. should a capital infusion be needed. Tr. at 71-72.

13. ProAssurance and NCRIC Group testified that the financial condition of ProAssurance will not jeopardize the financial stability of NCRIC Group or NCRIC, Inc., or prejudice the interests of the policyholders. See PRA Response at III.C.1; NCRIC Response at III.C.1.

14. ProAssurance outlined a plan of operation under which it will continue to operate NCRIC, Inc. as a property and casualty insurer licensed and domiciled in the District with a strong local presence. See Form A Ex. D; Tr. at 74, 88-90. ProAssurance represented that it has no plans or proposals to liquidate NCRIC, Inc., sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management that are unfair or unreasonable to policyholders of NCRIC, Inc., or not in the public interest. PRA Response at III.D.1. Following the merger, NCRIC, Inc. will be managed in the District as a regional office of ProAssurance. See Tr. at 88-89. The District regional office will handle underwriting, policy administration, claims, and risk management for all ProAssurance business in the District, Virginia, Delaware, and Maryland. See Tr. at 89. ProAssurance intends to continue to write all District business through NCRIC, Inc. See Tr. at 90. Initially, policies written by NCRIC, Inc. in other jurisdictions will remain with NCRIC, Inc. In the future, business written outside the District may be transferred to ProAssurance's other insurance subsidiaries upon policy renewal, with these decisions based primarily on capacity and rating agency considerations. See Tr. at 90. ProAssurance represented that it has no current intent to acquire other District of Columbia domestic insurance companies or non-domestic insurers that sell medical malpractice insurance in the District of Columbia. See PRA Response at III.B.4.

15. Most of NCRIC, Inc.'s back office functions (i.e., accounting, actuarial, corporate administrative, compliance, and information systems) will be consolidated into ProAssurance's office in Birmingham, Alabama. See Tr. at 91; PRA Response at IV.H.2. ProAssurance represented that it has no plans or proposals to make any material changes in its business or corporate structure that would be unfair or unreasonable to the policyholders or the public. See PRA Response at III.D. ProAssurance also represented that it did not intend to restrict the number of policies issued in the District and that the acquisition would not lead to an increase in the cost of insurance or a decrease in the availability of insurance. See Tr. at 171-73. When comparing Applicant's underwriting practices to NCRIC, Inc.'s, ProAssurance testified that the underwriting practices would remain substantially the same. See Tr. at 100-02. ProAssurance

also testified that it had no plans to redomesticate NCRIC, Inc. See Form A Ex. H; Tr. at 74; PRA Response at IV.H.1.

16. Both NCRIC Group and ProAssurance are publicly traded companies. See Tr. at 160. According to ProAssurance, the SEC reports and insurance filings of both companies reflect the high degree of competence, experience, and integrity on the part of their officers and directors. See Tr. at 169-170. Moreover, ProAssurance testified that one of its goals of the merger is to capture the local expertise of the current management of NCRIC Group. See Tr. at 170.

17. ProAssurance's stated mission is to provide a reliable source of professional liability insurance for physicians in the states in which it has written business. See PRA Response at III.F. ProAssurance testified that the coverages offered under ProAssurance's and NCRIC, Inc.'s policies are very similar. See Tr. at 97-98, 108-09. ProAssurance testified that no fundamental changes in NCRIC, Inc.'s underwriting philosophy or approach are expected. See Tr. at 100-01.

18. In the fourth quarter of 2004, NCRIC Group experienced a net loss of \$8.3 million, which resulted in a net loss of \$7.1 million for the year ended December 31, 2004. See Tr. at 126. These results were driven primarily by adverse developments in claims reported in prior years. *Id.* In addition, in February of 2004, a District of Columbia Superior Court jury returned a verdict on a counter-claim against NCRIC, Inc. and in favor of Columbia Hospital for Women in the amount of \$18.2 million. *Id.* After announcing a reserve adjustment on February 28, 2005, A.M. Best downgraded its rating of NCRIC, Inc. from "A-" to "B++", with negative implications. See Tr. at 143-44. NCRIC Group also testified that it believes there is a strong likelihood of future downgrades by A.M. Best of NCRIC, Inc. if the merger is not approved. *Id.*

19. ProAssurance represented that NCP Merger Corporation, a wholly owned subsidiary of ProAssurance, will, upon consummation of the merger, assume all liabilities of NCRIC Group, including NCRIC Group's obligations to indemnify NCRIC, Inc. for up to \$5.5 million in respect to the Columbia Hospital for Women judgment and for all associated post-trial legal fees and costs. See PRA Response at II.J.

20. NCRIC, Inc.'s B++ A.M. Best rating is one of only two of such ratings for professional liability carriers in the District market. See Tr. at 128-29; 143-44. ProAssurance's A.M. Best rating is an "A-". See Tr. at 39.

21. In an effort to provide NCRIC, Inc.'s policyholders with additional information regarding the proposed acquisition, members of the NCRIC Group board and management, including Nelson P. Trujillo, M.D., Chairman of the Board, and R. Ray Pate, President and Chief Executive Officer, held two town hall meetings, on March 16, 2005 at Sibley Hospital and on March 30, 2005 at Providence Hospital. See Tr. at 130. A total of 63 physicians attended the two meetings. In response to whether any objections were raised at the town hall meetings, Mr. Pate testified that the response to the merger by the policyholders was one of "shock" that the company had agreed to be merged and that the policyholders were "concerned about a

continuation of their coverage and the availability of coverage within the District of Columbia and the benefits contained within [NCRIC, Inc.'s] policies." See Tr. at 138. Mr. Pate further testified that he thought "we were able to satisfy [the policyholders] with the similarities between NCRIC and ProAssurance in our approaches to the business." Id.

22. NCRIC Group established a liquidation account in 2003 pursuant to Section 15A of the Plan of Conversion referenced in the Department's May 14, 2003 Decision and Order in In Re: NCRIC, A Mutual Holding Company, DMA 03-01. Under the term of the liquidation account, in the event of the complete liquidation of NCRIC Group within five years of the conversion, certain eligible members of the mutual holding company as of January 28, 2003, who continue to be policyholders of NCRIC, Inc., would be entitled to a distribution of the liquidation account after payment to all creditors and before any payments to stockholders. The liquidation account is being assumed by ProAssurance by virtue of the merger. NCRIC Response at IV.B; Tr. at 51, 67 & 120. Currently, NCRIC Group and NCRIC, Inc. maintain records sufficient to enable them to determine the appropriate preference upon any liquidation of NCRIC Group, should that occur. Following the merger, these records will continue to be maintained for the remainder of the five-year period. Tr. at 133-34.

23. The only testimony critical of the acquisition and merger was from Mr. Schmitt, Public Citizen Congress Watch, a public interest organization. See generally Tr. at 191-220; Exs. 29 and 30. Without formally taking a position on the acquisition (see Tr. at 212-13), Public Citizen's testimony principally focused on drawing correlations between rising premium rates and the effect the rates have on the quality of health care in the District and plaintiffs' ability to obtain full recoveries in court. See Tr. at 195. Mr. Schmitt testified that he did not review the Form A filing, or the interrogatory responses of either ProAssurance or NCRIC Group. See Tr. at 216, 219. Mr. Schmitt also testified that he had no documentary evidence that could show any of the six criteria to be considered by the Commissioner under the HCS Act would be violated by the acquisition and merger. See Tr. at 204-05.

24. Mr. Barlow, Assistant Director for Financial Examinations for the Department, testified that he supervised the Form A review conducted by his staff in accordance with the Framework for Insurance Holding Company Analysis, Form A Review Checklist, as published by the National Association of Insurance Commissioners. Mr. Barlow testified that the Form A filing met all the requirements for the District of Columbia for approval of the transaction and that he was not aware of any reason why the Commissioner should not approve this acquisition. See Tr. at 223-227.

Analysis and Conclusions of Law

Pursuant to D.C. Official Code § 31-703(g)(1)(A), the Commissioner must consider the proposed merger in light of each of the following six criteria.

- 1. After the acquisition of control, will the insurer be unable to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed?**

ProAssurance is an insurance holding company which operates through five subsidiaries that write medical malpractice business on an admitted basis in twenty-two states. Five of those jurisdictions provided letters of good standing. ProAssurance represented that the continued licensure of its operating subsidiaries is of utmost concern to it, that it has safeguards in place to ensure that its subsidiaries continually meet the requirements for licensure in their respective jurisdictions of operation (including monitoring minimum surplus requirements and IRIS ratios for financial stability, and maintaining all statutorily required financial and other filings), and that it intends to implement the same safeguards for NCRIC, Inc. There is no evidence in the record that after the change of control, NCRIC, Inc. will be unable to satisfy the requirements for issuance of a license to write property and casualty insurance, which is the line of insurance for which it is presently licensed. Credible evidence shows that following the acquisition, NCRIC, Inc. will continue to operate as a property and casualty insurer licensed and domiciled in the District of Columbia. NCRIC, Inc. will be operated as a wholly owned subsidiary of ProAssurance, with substantially the same assets and liabilities and in substantially the same manner as it is presently conducting business. See Findings of Fact [hereinafter "FF"] 5-7.

I, therefore, conclude that after the acquisition of control, NCRIC, Inc. will be able to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed, and that ProAssurance's acquisition of control of NCRIC, Inc. will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(i).

2. Will the effect of the acquisition of control be substantially to lessen competition in the District or tend to create a monopoly?

In evaluating the competitive effects of Applicant's control of NCRIC Inc, the HCS Act requires the Commissioner to apply the competitive standard of D.C. Official Code § 31-704(d)(2)(A) & (B) when there are two companies competing in the market. Evidence was presented that none of ProAssurance's subsidiaries have written any premiums in the District of Columbia. See FF 1. ProAssurance outlined a plan of operation under which it will continue to operate NCRIC, Inc. as a property and casualty insurer domiciled in the District of Columbia with a strong local presence and intends to write all District business through NCRIC, Inc. See FF 14. Moreover, Applicant has no plans to acquire other insurance companies in the District that operate in the same lines of business. See FF 14. Thus, following the merger, the number and the concentration of insurers writing medical professional liability insurance in the District will be unchanged.

Section 31-704(d)(2)(E) of the D.C. Official Code also provides the Commissioner with a discretionary basis to demonstrate anticompetitive effects, and specifies certain factors that may be considered. Section 31-704(d)(3), however, states that an order may not be entered under the section if (A) the acquisition will "yield substantial economies of scale or economies in resource utilization that feasibly cannot be achieved in any other way," or (B) the acquisition will "substantially increase the availability of insurance," and, in each such case, the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition. ProAssurance and NCRIC Group testified that the acquisition would

yield economies of scale. ProAssurance testified that because of ProAssurance's size and lower expense ratio, NCRIC, Inc. should be able to benefit from those economies within the first year. ProAssurance also testified that NCRIC, Inc.'s policyholders will benefit from the strength of ProAssurance's financial condition, depth of management and operational resources. With regard to reinsurance, ProAssurance testified that it benefits from greater premium volume and geographic diversification, with the effect of averaging volatile results over a larger premium base, and ProAssurance expects that NCRIC, Inc.'s business will be included within the ProAssurance reinsurance program effective January 1, 2006. See FF 10.

I, therefore, conclude that the effect of the acquisition of control will not be substantially to lessen competition in insurance in the District or tend to create a monopoly, and that ProAssurance's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(ii).

3. Would the financial condition of the acquiring company jeopardize the financial stability of the insurer or prejudice the interests of its policyholders?

Evidence was presented that the financial condition of ProAssurance will not jeopardize the financial stability of NCRIC, Inc. or prejudice the interests of its policyholders. No assets of NCRIC Group or NCRIC, Inc. will be used to fund the merger. Rather, substantially all of the consideration for the merger will be paid in ProAssurance common stock. In fact, the financial stability of ProAssurance will strengthen the financial stability of NCRIC, Inc., which has deteriorated in the last year, and will provide a source of capital that may be used to further strengthen the financial stability of NCRIC, Inc. in the future, if necessary. Pro forma financial statements filed by ProAssurance with its registration statement on Form S-4 indicate that after the merger, the combined companies would have had net income of \$65.6 million in 2004, notwithstanding the fact that NCRIC Group sustained a loss from its operations in 2004. See FF 11, 12, 13 & 18.

ProAssurance represented that it has a history of providing capital to its subsidiaries to support their stability and growth, and ProAssurance testified at the hearing that it would sustain the capital necessary for NCRIC, Inc. to run its operations, that it does not foresee any limitations on the amount of capital it would be willing to interject into NCRIC, Inc. to support NCRIC, Inc.'s current or expected operations, and that it has not placed any limit on the amount of capital ProAssurance would be willing at this time to commit to NCRIC, Inc. should a capital infusion be needed. See FF 12.

I, therefore, conclude that the ProAssurance's financial condition is not such as might jeopardize the financial stability of NCRIC, Inc. or prejudice the interests of NCRIC, Inc.'s policyholders, and that ProAssurance's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(iii).

- 4. Are plans or proposals which the acquiring company has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any material change in its business or corporate structure or management, unfair or unreasonable to policyholders of the insurer or not in the public interest?**

The evidence received by the Department shows that ProAssurance has no plans or proposals to liquidate NCRIC, Inc. or to sell any of its assets. ProAssurance outlined a plan under which it will continue to operate NCRIC, Inc. as a property and casualty insurer licensed and domiciled in the District with a strong local presence. Form A, Ex. D (Proposed Plan of Operation). Following the merger, NCRIC, Inc. will be managed in the District as a regional office of ProAssurance. Although most of NCRIC, Inc.'s back office functions (i.e., accounting, actuarial, corporate administrative, compliance, and information systems) will be transferred to ProAssurance's Birmingham, Alabama, office, the District regional office will handle underwriting, policy administration, claims, and risk management for all ProAssurance business in the District, Virginia, Delaware, and Maryland. ProAssurance intends to continue to write all District business through NCRIC, Inc. Nothing suggests that the plan of merger is unreasonable or unfair to the policyholders of NCRIC, Inc., or not in the public interest. See FF 14 & 15.

I, therefore, conclude that there are no plans or proposals of ProAssurance to liquidate NCRIC, Inc., sell its assets, or consolidate or merge NCRIC, Inc. with any person, or to make any other material changes in NCRIC's Inc.'s business or corporate structure or management that are unfair and unreasonable to NCRIC, Inc.'s policyholders or are not in the public interest, and that ProAssurance's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(iv).

- 5. Are the competence, experience, and integrity of those persons who would control the operation of the insurer such that it would not be in the interest of policyholders of the insurer and of the public to permit the acquisition of control?**

Evidence was presented that the persons who will control NCRIC, Inc.'s operations after the merger have the requisite competence, experience, and integrity. ProAssurance operates five insurance subsidiaries, which write medical malpractice business on an admitted basis in 22 states, and is the nation's fourth largest writer of medical professional liability insurance. ProAssurance submitted letters of support and good standing from insurance regulators of five of those jurisdictions, including the two states in which its principal subsidiaries are domiciled. The record contains evidence that ProAssurance's management team has an average of 22 years in the industry and an average of 14 years with ProAssurance. ProAssurance submitted biographical affidavits of its senior officers and directors for the Department's review, which the Department has reviewed. ProAssurance also testified that one of the demonstrated goals of the merger is to capture the local expertise of the current management of NCRIC Group, which will further serve the interests of policyholders and the public. FF 1 & 6.

I, therefore, conclude that the competence, experience, and integrity of those persons who would control NCRIC, Inc.'s operation are not such that it would not be in the interest of NCRIC, Inc.'s policyholders and of the public to permit acquisition of control, and that ProAssurance's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(v).

6. Is the acquisition likely to be hazardous or prejudicial to the insurance buying public?

The transaction is not likely to be hazardous or prejudicial to the insurance buying public. Rather, as the nation's fourth largest medical professional liability insurance company, insuring over 23,000 physicians in 22 states, ProAssurance has a history of providing reliable service to physicians and good corporate citizenship. The insurance departments of Alabama, Florida, Illinois, Michigan, and Ohio, which include the two states in which ProAssurance's principal subsidiaries are domiciled, have all provided written statements attesting to ProAssurance's record of integrity and competence. In addition, the Medical Society of the District of Columbia, which was instrumental in the founding of NCRIC, Inc.'s predecessor (see footnote 1) provided testimony affirming that the proposed merger will be in the best interest of its members. ProAssurance testified that it plans to continue NCRIC, Inc.'s physician-focused operations and underwriting utilizing NCRIC, Inc.'s present underwriting and claims staff. The policyholders of NCRIC, Inc. and the insurance buying public also will benefit from the strength of ProAssurance's financial condition, the depth and expertise of its management, and its operational resources. Further, the coverages offered under ProAssurance and NCRIC, Inc.'s policies are very similar. FF 1, 4, 6, 7, 10, 15 & 17.

I, therefore, conclude that the acquisition is not likely to be hazardous or prejudicial to the insurance buying public, and that ProAssurance's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(vi).

Having considered all of the testimony and documents submitted for the record, I conclude that the proposed acquisition of control of NCRIC, Inc. by ProAssurance Corporation does not violate any of the six standards set forth in the section 4(g)(1)(A) of the HCS Act (D.C. Official Code § 31-703(g)(1)(A)) for reviewing an acquisition of control of or merger with a District domestic insurer. Accordingly, I conclude that the proposed merger should be approved, subject to the conditions and undertakings set forth in this Decision and Order, which have been established to further the purposes of Section 4 of the HCS Act.

ORDER

It is therefore ORDERED that the proposed acquisition of control of, and merger with, NCRIC Group, Inc., by ProAssurance Corporation pursuant to the Holding Company System Act of 1993 be and is hereby authorized and approved, subject to the satisfaction of the following conditions and undertakings, each of which shall be deemed to be supplementary to, and not in derogation of, existing applicable statutes, regulations, and orders:

Conditions and Undertakings:

- 1 Prior to the consummation of the merger that is the subject of the Form A:
 - a. ProAssurance, NCRIC Group, and NCRIC, Inc. shall have obtained all required regulatory approvals necessary for the consummation of the merger.
 - b. The shareholders of NCRIC Group shall have approved the merger in accordance with applicable law and the Articles of Incorporation and Bylaws of NCRIC Group.
 - c. Neither ProAssurance nor NCRIC Group shall, without the prior written approval of the Commissioner, modify the Merger Agreement prior to the consummation of the merger (excluding any modifications to the Disclosure Schedules to reflect changes in facts occurring subsequent to the date the Merger Agreement was executed).
 - d. ProAssurance shall not, without the prior written consent of the Commissioner, modify the Proposed Plan of Operation contained in Form A prior to the consummation of the merger.
 - e. If any of the representations made by ProAssurance to the Department that are referenced in this Decision and Order cease to be true and correct, ProAssurance shall promptly so notify the Department and shall not consummate the merger unless and until ProAssurance receives a further Order of the Commissioner or written notification from the Department that no such further Order is required.
 - f. ProAssurance shall submit to the Department an opinion of an expert in insurance company compensation practices that states that the compensation of NCRIC, Inc.'s executive officers is reasonable and within industry standards, taking into account the size, nature, and location of NCRIC, Inc.'s operations.
2. During the two (2) year period commencing upon the consummation of the merger that is the subject of the Form A ProAssurance shall notify the Department prior to effecting any material change to the Proposed Plan of Operations (Exhibit D to the Form A), and shall not change NCRIC, Inc.'s underwriting practices as testified to by ProAssurance at the June 6, 2005 public hearing, if in either case such changes would impact NCRIC, Inc.'s operations or unduly restrict the availability of coverage through NCRIC, Inc. in the District of Columbia. If the operations of NCRIC, Inc. in the District of Columbia become inconsistent in any material respect with such Proposed Plan of Operations or underwriting practices, ProAssurance shall immediately notify the Department in writing of any such inconsistencies.

3. During the five (5) year period commencing upon the consummation of the merger that is the subject of the Form A, NCRIC, Inc. shall maintain its headquarters and domicile in the District of Columbia and remain a separate business entity and shall not redomesticate without the prior approval of the Department.
4. Because of NCRIC, Inc.'s dominant position in the medical professional liability insurance market in the District of Columbia, the following condition is imposed: So long as NCRIC, Inc. and/or any other insurance subsidiary of ProAssurance has more than 40% of the District of Columbia market for the most recent year for which such data is then available (as determined by the Department) for a particular line of insurance, then NCRIC, Inc. and/or such other insurance subsidiary of ProAssurance shall provide the Department with no less than forty-five (45) days prior notice of any rate increase. The Department reserves all rights under applicable law and regulations to disapprove the usage of any new rates.
5. At all times commencing upon the consummation of the merger that is the subject of the Form A:
 - a. The Commissioner shall have full regulatory authority over ProAssurance as authorized by the laws and regulations of the District of Columbia.
 - b. The Commissioner shall retain full regulatory authority over NCRIC, Inc. and American Captive Corporation, and any other intermediate holding companies that may be later included in the ProAssurance holding company structure consistent with the laws and regulations of the District of Columbia.
 - c. The Commissioner shall have full access to the books and records of NCRIC, Inc., American Captive Corporation and any other companies that may be a part of their holding company structure, regardless of the location of such books and records.
6. ProAssurance shall submit new affidavits for newly appointed directors and update the existing biographical affidavits of its current directors, which were submitted as a part of the Form A, on a no less than annual basis. However, ProAssurance shall report immediately to the Department any information that would impact the integrity of any of its directors.
7. Upon consummation of the merger, ProAssurance and NCRIC, Inc. shall cause the liquidation account established by NCRIC Group to continue to be maintained for the balance of its five-year duration, and during the balance of such five-year duration, ProAssurance and NCRIC, Inc. shall also maintain or cause to be maintained records sufficient to determine the appropriate liquidation preference amounts and payees.
8. ProAssurance agrees that the Department retains the authority to hire attorneys and experts, as needed and at the expense of ProAssurance, pursuant to section 4(g)(3) of

the HCS Act (D.C. Official Code § 31-703(g)(3)), to review and evaluate any issue related to the merger or this Decision and Order.

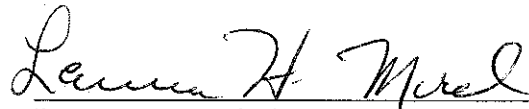
9. The Commissioner retains jurisdiction in this matter to enforce the conditions and undertakings in this Decision and Order.

SO ORDERED:

Dated this 13 of July, 2005.

Approved and so Ordered:

In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department in the District of Columbia, this 13 day of July, 2005.



Lawrence H. Mirel
Commissioner

Counsel:

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For Public Citizen:

Mr. Frank Clemente, Director

Public Citizen's Congress Watch

215 Pennsylvania Avenue, SE

Washington, DC 20003

Certificate of Service

I hereby certify that the original Decision and Order captioned IN THE MATTER
OF: Proposed Acquisition of, Control of, and Merger with, NCRIC, INC. BY
Proassurance Corporation was hand delivered, to Rhonda Blackshear, Attorney Advisor,
Department of Insurance, Securities and Banking, Office of Legal Affairs, 810 First
Street, N.E, Suite 701, Washington, DC 20002.


Name

Julie K. Miller, Legal Asst. 7/13/05
Date

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I hereby certify that a copy of the Decision and Order captioned IN THE
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Myers, Jr. 1401 H Street, N.W., Suite 760, Washington, DC 20005.


Name

 Legal Asst. 7/13/05
Date

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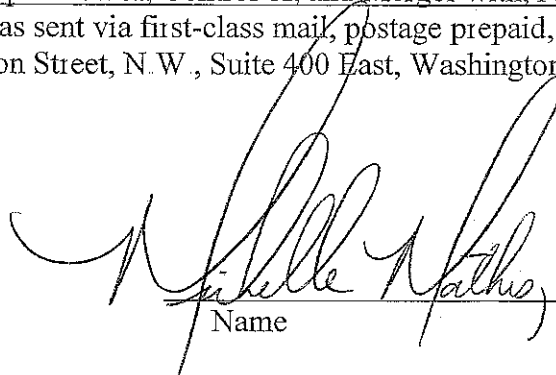
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Name

 Legal Asst. 7/13/05
Date

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5208.


Name Date
Michelle Mathis, Legal Asst. 7/13/05

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Legal Asst. 7/13/05
Date

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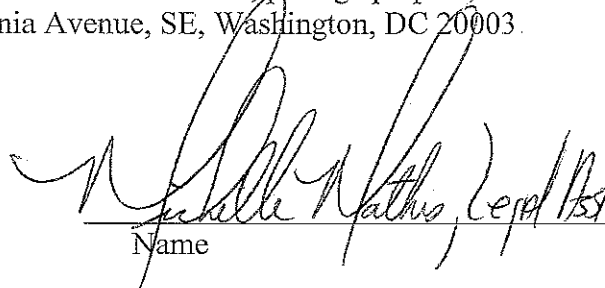
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Name

Legal Asst. 7/13/15
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Clemente, Director 215 Pennsylvania Avenue, SE, Washington, DC 20003.


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